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An unending variety of topics

Wednesday, January 09, 2008

"Jurisdiction as Property" makes the SSRN Top Ten List

I'm happy to announce that my paper "Jurisdiction as Property" made the top 10 list for all time most dowloaded papers in legal history on the Social Science Research Network, the standard site for posting scholarly legal papers here in the U.S. Alas, the number of downloads is not quite as overwhelming as this suggests -- academic interest in the crucially important area of legal history is depressingly small -- but then again they are not counting the larger number of downloads of the paper from my own web site. Here's my brief description of the paper:

> In medieval and renaissance England jurisdictions were often held as property. Relationships between these jurisdictions were property relations. The basic laws of jurisdiction were trespass and title. Infringement of a jurisdiction was a trespass, and abuse of a defendant by a court could be a trespass. In addition, the king could use his writ of right to challenge title to a franchise. In determining title, a crucial idea was seisin, which for franchises generally meant proper and continual use, and for jurisdictions in particular came to mean the following of proper procedure. Defense of trespass by and seisin of a franchise court came to imply obligations of protecting individual rights and serving the public good as well as private gain. Thus the property relations between franchises played a significant role in the development of English jurisdictional and procedural law.

Posted by Nick Szabo at 1:18 PM

2 comments:

Jim Bowery said...

I've often thought that a good way to think of a "nation" is as land, held in trust for the posterity of the founders of the trust. Certainly this is what was intended by the preamble to the US Constitution.

This is, of course, central to immigration policy and exposes the intellectual bankruptcy of Rick Fisk's portrayal Ron Paul's immigration policy:

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Nick Szabo

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A border is not a property boundary; it is a demarcation of legal jurisdiction. A person, who crosses a border, has not committed a common law crime. If he hasn't trespassed, there isn't a moral or just legal reason to demand he show papers or submit to a search. By making this demand, the government is insuring that those who want to retain their privacy do so by trespassing.

The U.S. Constitution grants no authority to harass people crossing the border unless those crossing are obviously intent on committing harm.

Given how crucial immigration was to the Iowa caucus, could the timing of this be considered ? I don't know but if I were Ron Paul I'd be crawling all over Lew Rockwell to never let anything like that go up on his website again.

It is certainly true that there needs to be , and this unification of property with jurisdiction is fundamental to that.

10:02 AM

nick said...

Bowery quoting Fisk: *A border is not a property boundary; it is a demarcation of legal jurisdiction.*

Under the monarcho-franchise system I described in my paper, jurisdictions _were_ property, and so jurisdictional boundaries were also property boundaries.

Popularly we treat property in land as if it all came in one generic variety, but even under modern property law that is not true. Thus there can be estates, sub-estates, and so on. There's no contradiction between having boundaries of larger properties and also having boundaries of smaller properties contained within them. And these boundaries can mean different things depending on the kind of estate involved. A jurisdictional estate can encompass a number of economic estates, for example, and the borders of each have different legal consequences.

That said, there is nothing more important to liberty than reducing exit costs. As Daniel Nagy points out, this also argues towards reducing entrance costs -- although I do draw a distinction between the two. See my debate with Daniel Nagy at the above link.

To briefly summarize my position, I think that property owner restrictions on residents or guests leaving the premises should be highly discouraged, and indeed generally constitute kidnapping. This applies at any scale. Thus all forms of serfdom and national citizenship with restrictions on emigration that tie people to land are highly destructive of liberty.

The right of an owner to exclude people, on the other hand, should be very high for smaller properties and less so far larger (jurisdictional) properties. A jurisdictional property that restricts entrance also restricts the freedom of association of the jurisdiction's inhabitants. If an individual desires to live and raise their children among "their own kind", whatever kind that is, the property policies or deeds that implement these associational preferences should be implement far more at a local level (for example with restrictive property deeds) than at a national level. Thus for example I favor discriminatory covenants on single lots and neighborhoods that the U.S. Supreme Court has struck down under the fraudulent theory that these constitute "government action" and thus violate the Equal Protection Clause. Dr. Paul tends more than the other candidates to favor such local approaches, but even he seems to be caught up with the dominant paradigm that sees immigration as primarily a national issue. To the extent he does that I largely part ways with him -- at such a large scale, I am for open borders.

3:23 PM

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